

STATE OF MICHIGAN
COURT OF APPEALS

MANOUSOS MAKRIDAKIS,

Plaintiff/Counter-Defendant-
Appellant,

v

JOHN MAKRIDAKIS,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

August 23, 2007

No. 269685

Wayne Circuit Court

LC No. 04-437582-CH

Before: Davis, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right an order compelling the sale of real property and an equitable division of the proceeds with defendant. For the reasons set forth in this opinion, we affirm the rulings of the trial court.

Plaintiff and defendant are father and son, respectively. According to defendant, in June 1996, he and plaintiff purchased property together located at 50070 Michigan Avenue in Van Buren Township, Michigan. Defendant claimed that plaintiff wanted to purchase an investment property for him just as he did for Beth. Beth is defendant's sister and plaintiff's daughter. When the property was purchased, defendant said that he and plaintiff had a good relationship. The property at issue contained a house that was converted into three separate apartments. Defendant said that from 1996 to 1999, he helped take care of the lawn, paint the exterior and erect a fence around the perimeter of the property. Defendant said that he lived in one of the apartments from 1999 to 2003 and that he paid plaintiff \$550 in cash monthly for the maintenance of the property and taxes.

Martha Stalburg, plaintiff's ex-wife and defendant's mother, maintained that plaintiff asked her for a loan to purchase the property at issue. Stalburg said that she agreed to loan plaintiff the money on the condition that plaintiff made defendant a co-owner. Stalburg maintained that she told plaintiff that if he wanted to borrow the money from her, he had to put defendant's name on the property. According to Stalburg, it is unlikely that she would have loaned plaintiff the money for the property in the absence of such an agreement.

Plaintiff is of Greek origin and maintained that his understanding of the English language is limited. Over the last 20 years, plaintiff has owned about six or seven properties, including a

restaurant that he owned and operated for 18 years. Plaintiff said that he put some of his properties in Beth's name because he was told that he should plan for his death. According to plaintiff, he did not know that defendant's name was on the property at issue until years after the property was acquired. Plaintiff also said that he did not promise Stalburg that he would put defendant's name on the property as part of the loan agreement.

Plaintiff filed a complaint against defendant alleging fraud and misrepresentation, intentional infliction of emotional distress, conversion, negligence and breach of fiduciary duty. Plaintiff requested a partition of the property and a termination of defendant's interest in the property. Defendant generally denied the allegations set forth in plaintiff's complaint and counter-claimed for breach of contract and an accounting to determine the profits made from the property, and on March 10, 2005, defendant moved for summary disposition. Defendant argued that the facts were not "seriously" in dispute and that the statute of limitations on plaintiff's claims for negligence, fraud, misrepresentation, intentional infliction of emotional distress and conversion expired.

On April 1, 2005, plaintiff responded to defendant's motion. Plaintiff argued that the statute of limitations were not in dispute because defendant failed to take into account the accrual of the claims. Plaintiff argued that accrual commences when defendant's act harmed plaintiff, not when defendant committed the wrong. Plaintiff also argued that the discovery rule delays the running of the statute of limitations until the claimant discovers, or should have discovered, that a cause of action exists. According to plaintiff, he did not discover the injury until he attempted to divide his property in 2003.

On April 21, 2005, the trial court granted defendant summary disposition on the claims of fraud and misrepresentation, intentional infliction of emotional distress, conversion, negligence and breach of fiduciary duty. The trial court found that, based on the evidence presented, the "accrual document" did not apply. After a two-day bench trial on plaintiff's partition claim, the court ordered that the property be sold and the proceeds from the sale of the property be split between the parties.

Plaintiff first argues that the trial court erred when it granted summary disposition in defendant's favor. According to plaintiff, discovery was incomplete and there were disputed issues of material fact. When reviewing a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(7), we review the record de novo to determine whether the moving party was entitled to judgment as a matter of law. *Lavey v Mills*, 248 Mich App 244, 249-250; 639 NW2d 261 (2001). We must "accept the contents of the complaint as true unless specifically contradicted by the documentary evidence." *Lavey, supra* at 250. We must also consider all the documentary evidence in the light most favorable to the nonmoving party. *Lavey, supra* at 250.

Plaintiff argues that summary disposition was premature because discovery was incomplete. "Generally, a motion for summary disposition is premature if granted before discovery on a disputed issue is complete. However, summary disposition may nevertheless be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 24-25; 672 NW2d 351 (2003). Even though plaintiff argues that discovery was incomplete, he fails to support his claim with independent evidence showing what could have been learned if

discovery had continued. “A party opposing summary disposition cannot simply state that summary disposition is premature without identifying a disputed issue and supporting that issue with independent evidence. *St Clair Medical, PC v Borgiel*, 270 Mich App 260, 271; 715 NW2d 914 (2006). Plaintiff’s inability to identify a disputed issue for this Court to consider, leads to our conclusion that this claim is without merit.

Plaintiff further argues that summary disposition was improper because disputed issues of material fact remained, regarding when he discovered his claims against defendant. According to plaintiff, he did not discover that he and defendant were joint owners of the property at issue until years after the property was acquired.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), which determines whether a moving party is entitled to judgment as a matter of law. “Summary disposition under MCR 2.116(C)(7) should not be granted if there are factual disputes regarding when discovery [of a claim] occurred or reasonably should have occurred.” *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 254; 506 NW2d 562 (1993). However, “a court may nonetheless conclude that no genuine issue of fact exists as to when the plaintiff discovered, or should have discovered, his claim.” *Simmons, supra* at 254.

Here, the trial court permissibly concluded that there were no genuine issues of fact regarding when plaintiff discovered, or should have discovered, his claims for fraud and misrepresentation, intentional infliction of emotional distress, conversion, negligence and breach of fiduciary duty. *Simmons, supra* at 254. Plaintiff claimed that he was unaware that he and defendant were joint owners of the property at issue and that he did not discover the joint ownership until years after the property was acquired. However, the trial court found that plaintiff knew, or should have known, of the joint ownership based on the following: (1) the title commitment had defendant’s name on it, (2) the warranty deed noted that when recorded it was to be returned to defendant, (3) the escrow agreement was signed by defendant only, (4) the homestead exemption update and/or property transfer affidavit was signed by defendant only, (4) the contract to purchase was signed by defendant only and (5) the buyer’s closing statement for the property was signed by both plaintiff and defendant. Because the evidence showed that plaintiff and defendant were active in the acquisition of the property at issue and that defendant’s name was present on key documents relating to the property, the trial court properly concluded that there were no genuine issues of fact regarding when plaintiff discovered, or should have discovered, the claims at issue. *Simmons, supra* at 254. For the reasons stated, plaintiff’s claim is meritless.

Plaintiff also argues that the trial court erred when it granted defendant’s motion for summary disposition because plaintiff’s claims for fraud, conversion and breach of fiduciary duty did not accrue until 2003. We disagree.

MCL 600.5827 provides:

Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.

Unless §§ 5829 to 5838 apply, a claim accrues when the wrong is done. *Boyle v Gen Motors Corp*, 468 Mich 226, 229; 661 NW2d 557 (2003). The statute of limitations is “a procedural device designed to promote judicial economy and protect defendants’ rights.” *Brennan v Edward D Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001). However, to prevent unjust results our courts have applied the discovery rule, which permits a plaintiff to bring suit even though he or she would have otherwise been denied a reasonable opportunity to do so due to the latent nature of the injury or the inability to discover the causal connection between the injury and the defendant’s action. *Brennan, supra* at 158. The discovery rule tolls the statute of limitations until a claim is discovered. *Brennan, supra* at 158. When deciding whether to strictly enforce a period of limitation or impose the discovery rule, a court must carefully balance when the plaintiff learned of his or her injuries, whether he or she was given a fair opportunity to bring suit, and whether defendant’s equitable interests would be unfairly prejudiced by tolling the statute of limitations. *Stephens v Dixon*, 449 Mich 531, 536; 536 NW2d 755 (1995).

While this may have been the status of the law at the time plaintiff filed his appeal, our Supreme Court’s recent ruling in *Trentadue v Gorton*, ___ Mich ___, ___ NW2d ___ (2007), negates plaintiff’s common-law claims. Thus, while the alleged wrong claimed by plaintiff took place in 1996 when the property at issue was acquired, plaintiff failed to file a complaint until 2004, even assuming plaintiff did not discover that he and defendant were co-owners of the property until 2003, *Trentadue, supra*, controls. The trial court properly concluded that plaintiff’s claim for conversion was also barred. Conversion is “any distinct act of dominion wrongfully exerted over another’s personal property” and it occurs at the point that such wrongful dominion is asserted. *Brennan, supra* at 158. Here, plaintiff sought to maintain an action for conversion of real property. However, common law conversion does not encompass alleged conversion involving real property, only personal property. *Embrey v Weissman*, 74 Mich App 138, 143; 253 NW2d 687 (1977). Although the issue whether plaintiff could maintain an action for the conversion of real property was never raised below and the trial court granted dismissal of plaintiff’s conversion claim based on the expiration of the statute of limitations, dismissal is still appropriate. The trial court reached the right result, but for the wrong reason. “A trial court’s ruling may be upheld on appeal where the right result issued, albeit for the wrong reason.” *Gleason v Michigan Dep’t of Transportation*, 256 Mich App 1, 7; 662 NW2d 822 (2003). Because plaintiff cannot maintain an action for conversion of the property at issue, the trial court properly dismissed this claim.

The trial court also properly barred plaintiff’s breach of fiduciary duty claim. “A claim of breach of fiduciary duty or breach of trust accrues when the beneficiary knew or should have known of the breach.” *The Meyer and Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 47; 698 NW2d 900 (2005). Whether a person knew or should have known about a breach of fiduciary duty or trust is subject to an objective standard. *The Meyer and Anna Prentis Family Foundation, Inc, supra* at 47-48. Defendant’s name was on the closing documents for the property and the warranty deed. Based on the evidence presented, plaintiff should have known at closing that he and defendant were co-owners of the property. This claim also fails for the reasons set forth in *Trentadue, supra*. For that reason, the trial court properly concluded that the discovery rule did not apply to the facts of this case.

The trial court also properly concluded that plaintiff's fraud claim was barred by the statute of limitations and that the discovery rule was inapplicable. The discovery rule has been adopted in certain cases, but the rule does apply in fraud cases. *Boyle, supra* at 231-32. Plaintiff's cause of action for fraud accrued when the wrong was done, he had six years thereafter to file a complaint. Because plaintiff failed to do so, this cause of action was also barred. *Boyle, supra* at 229. For the reasons stated, the trial court properly granted summary disposition on these claims.

Lastly, plaintiff argues that the trial court erred when it ordered a sale of the property instead of a partition. We review equitable issues de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

MCL 600.3332 provides, in relevant part:

If the court finds that all the lands and tenements of which division or partition is sought are so situated, or that any district, tract, lot, or portion of the lands and tenements is so situated, that a partition and division of them among the persons interested in them cannot be made without great prejudice to the owners, the court may order the circuit court commissioner to sell the premises which cannot be divided or partitioned, at a public auction to the highest bidder.

Although plaintiff argues that he sought partition of the property, during trial, plaintiff's counsel maintained that the property at issue was incapable of being divided equally. More specifically, plaintiff's counsel stated, "We agree that with the buildings and with the building it can't be physically halved like King Solomon. We both agree that would be inequitable." "[W]hen a party requests partition the court is obligated to comply unless some superior equity exists that warrants refusal. If the lands cannot be physically divided without prejudicing the parties, then the court must sell the property and divide the proceeds." *Beaton v LaFord*, 79 Mich App 373, 375-376; 261 NW2d 327 (1977). The court was permitted by MCL 600.3332 to order a sale of the property and a division of the proceeds because the parties maintained that the property was incapable of being partitioned without prejudice to the owners.

Affirmed.

/s/ Alton T. Davis

/s/ Bill Schuette

/s/ Stephen L. Borrello